

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

THOMAS BITNER and
TOSHIA PARKER,
individually and on behalf
of those similarly situated,

Plaintiffs,

Case No: 13-CV-451

vs.

WYNDHAM VACATION RESORTS, INC.
c/o Registered Agent for Service
Corporate Creations Network Inc.
4650 W. Spencer Street
Appleton, Wisconsin 54914

Defendant.

DECLARATION OF DAVID C. ZOELLER

I, David C. Zoeller, certify under penalty of perjury that the following is true and correct to the best of my knowledge and recollection:

1.) I am one of the attorneys representing the Plaintiffs and putative classes in the above captioned matter.

2.) Defendant primarily relies on *White v. Classic Dining Acquisition Corp.*, a decision characterizing the complaint at issue as the “epitome of formulaic recitations.” No. 1:11-cv-712-JMS-MJD, 2012 WL 1252589, at *4 (S.D. Ind. Apr. 13, 2012). In *White*, the plaintiff failed to allege basic elements of an FLSA claim,

including that the defendants “have sales that reach the [\$500,000.00] statutory threshold.” *Id.* The plaintiff also failed to allege “when [and how] she and others were allegedly shorted [minimum wages].” *Id.* at *5-*6. A review of that complaint reveals that the only factual allegation made by the Plaintiff, in a class and collective action complaint, was that: “White, when adding her tips to the wages Classic Dining pays, does not make the federal statutory minimum wage.”

3.) Attached as Exhibit A is the Plaintiffs’ First Amended Complaint.

4.) Attached as Exhibit B is the Complaint in *White v. Classic Dining Acquisition Corp.*

5.) Attached as Exhibit C are the following unpublished opinions:

Nicholson v. UTI Worldwide, No. 3:09-cv-722-JPG-DGW, 2010 WL 551551 (N.D. Ill. Feb. 12, 2010).

Solis v. El Tequila, LLC and Aguirre, No. 12-cv-588-JED-PJC, 2013 WL 3771413 (N.D. Okla. July 17, 2013).

White v. Classic Dining Acquisition Corp., No. 1:11-cv-712-JMS-MJD, 2012 WL 1252589 (S.D. Ind. Apr. 13, 2012).

Bailey v. Border Foods, Inc., No. 09-1230, 2009 WL 3248305 (D. Minn. Oct. 6, 2009).

Sanchez v. Holtz Construction, Inc., No. 09-C-7531, 2012 WL 13514 (N.D. Ill. Jan. 4, 2012).

McDonald v. Kellogg Co., No. 08-2473-JWL, 2009 WL 1125830, at *2 (D. Kan. Apr. 27, 2009).

Dated this 13th day of August, 2013

by: /s/ David C. Zoeller
David C. Zoeller